

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NIGEL FREDRICKS,

Plaintiff,

-against-

PHILLIP WHITTINGHAM,

Defendant.

22-CV-4248 (LTS)

ORDER

LAURA TAYLOR SWAIN, Chief United States District Judge:

By order dated December 5, 2022, the Court found that Plaintiff failed to state an inadequate mental health care claim under the Fourteenth Amendment against Dr. Whittingham, (ECF No. 15), and dismissed the complaint for failure to state a claim. The Court granted Plaintiff 60 days' leave to file an amended complaint. (*Id.*)

On January 6, 2023, Plaintiff filed a letter (ECF No. 16) advising the Court that he “submitted a second amended complaint,” but the Court’s docket did not reflect receipt of Plaintiff’s second amended complaint. On January 18, 2023, Plaintiff filed a four-page, 17-paragraph document which was docketed as a letter. (ECF No. 18.) On the same date, Plaintiff filed a four-page, 15-paragraph document, captioned as “Second Amended Complaint,” but originally docketed as a letter. (ECF No. 19.)

Two days later, on January 20, 2023, Plaintiff filed a notice of interlocutory appeal (ECF No. 20), and a letter (ECF No. 21), informing the Court that he had submitted two second amended complaints, one with 15 paragraphs and the other with 17 paragraphs, but that he wished to proceed with the 15-paragraph submission.

Because Plaintiff’s case was on appeal, this Court did not take any action during the pendency of the interlocutory appeal. By Mandate issued on June 15, 2023, the United States

Court of Appeals for the Second Circuit dismissed Plaintiff's appeal (ECF No. 23), and by order dated August 7, 2023, the Court dismissed the action pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii). (ECF No. 26.)

On August 30, 2023, Plaintiff filed a handwritten notice of appeal. (ECF No. 29.) Approximately two weeks later, on September 12, 2023, Plaintiff filed a notice of appeal using the court's form notice of appeal. (ECF No. 30.) Although Plaintiff filed two notices of appeal, and his appeal has been transmitted to the United States Court of Appeals for the Second Circuit, on September 18, 2023, Plaintiff filed a motion for extension of time to file a notice of appeal. (ECF No. 31.) For the reasons set forth below, Plaintiff's motion for an extension of time to file a notice of appeal (ECF No. 31) is denied as unnecessary.

DISCUSSION

Under Fed. R. App. P. 4(a)(1)(A), a notice of appeal in a civil case must be filed within 30 days after entry of judgment. "[T]he taking of an appeal within the prescribed time is mandatory and jurisdictional." *In re WorldCom, Inc.*, 708 F.3d 327, 329 (2d Cir. 2013) (citation and internal quotation marks omitted). Because Plaintiff filed a notice of appeal within 30 days after entry of judgment in this case, a motion for extension of time to appeal is unnecessary. Accordingly, Plaintiff's request for an extension of time to appeal is denied as unnecessary.

CONCLUSION

Plaintiff's request for an extension of time to file a notice of appeal (ECF No. 31) is denied as unnecessary.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an

appeal. *Cf. Coppedge v. United States*, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

SO ORDERED.

Dated: September 19, 2023
New York, New York

/s/ Laura Taylor Swain

LAURA TAYLOR SWAIN
Chief United States District Judge